

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	MM Docket NO. 88-577
)	
LIBERTY PRODUCTIONS, A LIMITED PARTNERSHIP)	File BPH-870831MI
)	
WILLSYR COMMUNICATIONS LIMITED PARTNERSHIP)	File BPH-870831MJ
)	
BILTMORE FOREST BROADCASTING FM, INC.)	File BPH-870831MK
)	
SKYLAND BROADCASTING COMPANY)	File BPH-870831ML
)	
ORION COMMUNICATIONS LIMITED)	File BPH-870831ME
)	
For A Construction Permit For A New FM Broadcast Station On Channel 243A At Biltmore Forest North Carolina)	
)	

To: The Commission

**EXHIBITS SUPPORTING ORION COMMUNICATIONS, LTD.'S MOTION FOR
STAY PENDENTE LITE**

- A. Excerpts from Deposition of Vicki Utter, introduced at hearing.
- B. Statement of Vicki Utter (Feb. 22, 1989), introduced at hearing.
- C. Statement of Vicki Utter (Mar. 13, 1989), introduced at hearing.
- D. Statement of Vicki Utter (Mar. 29, 1989), introduced at hearing.
- E. Excerpts from Hearing Testimony of Valerie Klemmer and Tim Warner.
- F. Betty Lee Declaration.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Liberty Ex. 11

In re Application of) MM Docket No. 88-⁵⁷⁷~~557~~
)
NATIONAL COMMUNICATIONS) File No. BPH-870831MF
INDUSTRIES)
)
RAKEL COMMUNICATIONS, INC.) File No. BPH-870831MG
)
LIBERTY PRODUCTIONS,) File No. BPH-870831MI
A LIMITED PARTNERSHIP)
)
WILLSYR COMMUNICATIONS) File No. BPH-870831MJ
LIMITED PARTNERSHIP)
)
BILTMORE FOREST) File No. BPH-870831MK
BROADCASTING FM, INC.)
)
SKYLAND BROADCASTING COMPANY) File No. BPH-870831ML
)
BILTMORE BROADCASTING, INC.) File No. BPH-870831MM
)
UNITED BROADCASTING) File No. BPH-870831MN
ENTERPRISES, INC.)
)
ORION COMMUNICATIONS LIMITED) File No. BPH-870901ME
)
HARBINGER BROADCASTING COMPANY) File No. BPH-870901MF
)
For a Construction Permit)
For a New FM Station)
in Biltmore Forest, North)
Carolina, on Channel 243A)
-----)

DEPOSITION OF VICKEY M. UTTER

April 27, 1989

1:10 p.m.

At the Offices of Sperling & Barraco, Inc.
Asheville, North Carolina

Reported by:

Geraldine T. Barraco, RPR, CM

A P P E A R A N C E S

For Liberty Productions:

Timothy K. Brady, Attorney at Law
Post Office Box 1692
Brentwood, Tennessee 37027-1692

For Orion Communications:

Mary C. Lawless, Attorney at Law
Mullin, Rhyne, Emmons and Topel
1000 Connecticut Avenue, Suite 500
Washington, D.C. 20036

Also Present:

David Murray

I N D E X

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By Mr. Brady	3

E X H I B I T S

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1 own tracts of land on the top of that mountain?

2 A. Well, the very top is owned by just one guy.

3 It's eight acres, the very top of the mountain.

4 Q. Who owns that? Do you know?

5 A. Mr. Hammentaller (phonetic), Bill Hammentaller.

6 Q. Is Hammentaller one word?

7 A. Yeah. I guess it's like two words, but it's
8 Hammentaller, maybe with a hyphen.

9 Q. Okay. Now, do you know whether his has a
10 restrictive clause in it or not?

11 A. I have no idea.

12 Q. You don't know. Okay. That's fine.

13 Do you recall when it was that you entered into
14 that lease with Channel 16 in Greenville, South Carolina?

15 A. Well, it's it's been about two years ago, I
16 guess, two-and-a-half.

17 Q. Okay. And they, as I understand, built a tower
18 on your property in the spring of 1987?

19 A. Yeah.

20 Q. And WCQS that uses the corner of the property
21 for an access -- their tower was also built, I think, in
22 spring of '87; is that correct?

23 A. Yeah, about the same time, close.

24 Q. Now, you said that property was adjacent to
25 yours. As best -- and I understand I'm asking you for an

1 estimate. But about how far apart are those towers?

2 A. Let's see. They're probably maybe 120, 150
3 foot.

4 Q. Okay. That's fine. That's all I need is an
5 estimate.

6 Now, since you have entered into the agreement,
7 the lease agreement with Channel 16, and since you
8 entered into whatever agreement you have with WCQS to
9 allow them to use that corner of your property, have you
10 received any complains from any of the other landowners
11 regarding your allowing, helping -- assisting WCQS and
12 allowing Channel 16 to build towers on your properties?

13 A. A few.

14 Q. Have you received any of those kind of
15 complaints from realtors?

16 A. Yeah.

17 Q. But you have no restrictions on your property?

18 A. No.

19 Q. The complaints that you received -- was that
20 soon after the towers were constructed? Would that have
21 been in, say, the summer of '87, or has it been more
22 recently?

23 A. No. It was after the towers were put up and
24 while this was going on.

25 Q. Now, when you agreed to allow WCQS to use the

1 corner of your property for their access to the Biltmore
2 Estate property, did you negotiate or deal with Tim
3 Warner in that process?

4 A. You mean for him using my land?

5 Q. Right.

6 A. No. It was just, "You can do this." You know,
7 it was just an agreement. I let him --

8 Q. Okay. So it's a verbal-type agreement?

9 A. Right.

10 Q. So you didn't sign any contract with them or
11 anything?

12 A. No.

13 Q. But is he the person -- my question is: Is Tim
14 Warner the person that you --

15 A. Right.

16 Q. -- agreed to do that with?

17 A. Right.

18 Q. And when did you first meet Tim Warner?

19 A. Before they put the tower up.

20 Q. Okay. So it was sometime -- if they put it up
21 in --

22 A. It was probably in the wintertime before that.

23 Q. It was probably in the same year, though, '87?

24 A. Yeah.

25 Q. Okay. And do you remember approximately how

1 A. No.

2 Q. Now, did there come a time after the spring of
3 '87 when these two towers were constructed that Mr. Brian
4 Lee contacted you?

5 A. Right.

6 Q. Now, did he contact you directly or through a
7 real estate broker?

8 A. No. He called me, he and Steven Aceto, his
9 attorney.

10 Q. Did you know Mr. Lee before when he called you?

11 A. Not other than hearing him on the radio station,
12 no.

13 Q. And what about Mr. Aceto? Was Mr. Aceto an
14 attorney you knew at the time?

15 A. No. This was Brian Lee's attorney.

16 Q. Did he make an appointment to come and visit
17 you?

18 A. Yes.

19 Q. Do you recall approximately when that was?

20 A. Oh, I guess it's been over a year ago. So what
21 year is this? I can't -- sometime in early '88 maybe.

22 Q. Well, if I told you it was probably in '87 near
23 August --

24 A. Late '87.

25 Q. Late '87?

1 A. Yeah.

2 Q. What, if anything, did he tell you on the phone
3 about why he wanted to meet with you?

4 A. Just about the possibility of leasing a piece of
5 land to put up a tower.

6 Q. And so then you agreed to meet him, and he came
7 over?

8 A. I told him I'd talk to him about it.

9 Q. So he came to your house. Did the attorney come
10 with him at that time?

11 A. Yes.

12 Q. What did he tell you that he wanted to do or
13 wanted -- what kind of arrangement did he want with you?

14 A. With me? Basically, to put up about the same
15 type of tower that Channel 16 had, not taking up any more
16 land than what they had done. And he kind of picked out
17 a place.

18 Q. Now, did he happen to tell you, at that first
19 time that he came to your house, that he was going to be
20 applying for a station for Biltmore Forest?

21 A. Well, I think it was a new FM station coming
22 into town. That was --

23 Q. -- the way it was described?

24 A. Yeah. You know, I didn't realize it was
25 Biltmore Forest. It was just the new FM station coming

1 into Asheville.

2 Q. Do you recall him ever, in a later discussion
3 back in '87, mentioning that it was for Biltmore Forest?

4 A. No, I don't think so.

5 Q. And did you reach an agreement with him at that
6 meeting, or did you have several meetings with him?

7 A. No. We agreed, I think, then.

8 Q. And what, as you recall, was the nature of the
9 agreement? You were -- this was nothing in writing at
10 that particular date, was it?

11 A. Uh-uh.

12 Q. So what agreement did you reach with him at that
13 time as you recall?

14 A. You mean years, money, that type thing or --

15 Q. Yeah; and, you know, where the tower would go,
16 how tall and --

17 A. Well, like I said, he picked out a site, you
18 know, about where he thought he would like to put it in
19 relation to the other towers. He didn't want to be too
20 close, you know, or -- if he got too far under the
21 mountain, of course, the tower would have to be a lot
22 higher.

23 Q. Right.

24 A. And we agreed on a figure and --

25 Q. And that was for a yearly figure, a monthly

1 figure or --

2 A. A yearly figure --

3 Q. Annual. Okay.

4 A. -- and a five-year contract with an option to
5 renew again.

6 Q. Now, he told you that he was going -- that he
7 was applying for a new station at that time?

8 A. (Witness nods head.)

9 Q. And he didn't say what city?

10 A. Well, just the FM station in Asheville.

11 Q. Okay. And did he tell you how long it would be?
12 Did he give you any indication that it would be a period
13 of time before he knew he would be building a tower or
14 not?

15 A. Yeah. He said, well, you know, that it was --
16 the whole thing was, "If we get this, then we'll
17 construct the tower."

18 Q. Did he indicate to you that he would have any
19 desire to lease that property and put up a tower if he
20 didn't get the license for the station?

21 A. I don't know as we even talked about it.

22 Q. Without what he may have told you, did you, from
23 your conversations with him and the understanding of the
24 fact that he was applying and it would be a while and
25 it's possible he might not get the license -- you were

1 aware of that at that time?

2 A. Yes.

3 Q. And was it your understanding that if he didn't
4 get the license, that he was not going to be interested
5 in using the property?

6 A. I guess you'd just assume that.

7 Q. Well, that's what I'm saying. I'm asking what
8 you were thinking, you know, regardless of -- he may
9 never have said anything about that possibility.

10 A. Well, I knew there was a possibility he wouldn't
11 get the tower, because he said there was a lot of
12 applicants.

13 Q. Now, is it your understanding at the time that
14 you talked with him that he had already filed an
15 application or that he was going to file an application?
16 Do you recall?

17 A. No. I assumed you had to wait until you had a
18 place maybe. I don't know. I don't --

19 Q. That's fine. That's fine. That's a perfectly
20 legitimate answer.

21 Okay. And so you agreed that in the event he
22 was -- he got the license, that you would allow him to
23 build a tower there and he would pay you a figure that
24 you all agreed to.

25 A. Right.

1 Q. And he would have a five-year term with an
2 option to renew his term.

3 A. Right.

4 Q. Now, you did sign a lease agreement with him; is
5 that right?

6 A. Yes, I did.

7 Q. And how soon after this meeting -- do you
8 remember, just the best you can recall, about how much
9 time it was that --

10 A. A few days to a week. It wasn't very long.

11 Q. And, at this meeting, did you ask that he
12 prepare a lease agreement, or did he or his attorney say,
13 "We want you to sign a lease agreement"?

14 A. They prepared the lease agreement, and I met
15 them at Steven Aceto's office.

16 Q. In terms of the meeting that you had with him
17 when you first agreed that you would let him use the --
18 lease him the property, did you ask him to prepare a
19 lease and bring it?

20 A. No, no.

21 Q. Did his attorney suggest to him or to you that
22 you should sign a written lease agreement at that time?

23 A. One or the other of them just --

24 Q. One of them --

25 A. One of them --

AFFIDAVIT OF VICKY M. UTTER

I, Vicky M. Utter, hereby certify as follows:

I am the sole owner of approximately 37 acres of land on Busbee Mountain, east of Asheville, North Carolina. My property is identified as Lot 69. I am advised that the geographic coordinates North Latitude 35°-31'-39"; West Longitude 82°-29'-45" are located on my property.

I understand that Liberty Productions, A Limited Partnership ("Liberty") has specified my property described above as its proposed transmitter site in an application for a new FM radio station, to be licensed to Biltmore Forest, that it filed with the Federal Communications Commission ("FCC") on August 31, 1987. I further understand that Liberty stated in that application that it has reasonable assurance that my property will be available to it for use as a transmitter site, and that it obtained such assurance by contacting me. My understanding is based on the attached pages from Liberty's application.

I do not know Valerie Klemmer or any other representative of Liberty. To the best of my knowledge and belief I have never even spoken to Ms. Klemmer or any other representative of Liberty. I am certain that I did not give any assurance to Ms. Klemmer, or to any representative of Liberty, that my property would be

3-13-89

I, Vickey M. Utter do hereby state that:

At the time I signed the affidavit (stating I had never met Valerie Klemmer) I did not recall meeting her.

Tim Warner called me at work on Friday March 10 and reminded me that he and Mrs. Klemmer visited my property on Busbee Mtn. about one and a half years ago.

At that time I told them that I had leased a portion of my land to Brian Lee for a tower to be constructed should he be awarded the new FM radio station. It was also discussed the possibility of leasing Valerie a piece of land for the same purpose but since she never contacted me again I assumed she found someplace more suitable for her project.

I have never heard of the name "Liberty Productions" until Feb. of 89 when I was asked if I had ever been contacted by them.

At this time I can not honestly say I would ever be willing to lease any property to anyone else for any purpose.

Vickey M. Utter
E. M. Utter

I, Vickey M. Utter state:

That when I signed the affidavit that Brian Lee filed with the FCC, I honestly did not recall even meeting or talking to Valerie Klemmer.

A couple of weeks after this I received a phone call from Tim Whelan reminding me of the day he and Valerie Klemmer were on Busbee Mtn and at that time he had introduced me to Valerie.

We talked, in my yard, for a brief period concerning my property lease to Brian Lee. At that time or any other time "I never gave Valerie the promise or assurance that she could use my land or my name when she filed the application with the FCC."

If we had discussed this or I had given her this assurance I certainly would have remembered and I would have been looking for her to make a commitment of some sort. As this did not happen therefore I had forgotten even meeting the lady."

Vickey M. Utter
3-29-89

No one has influenced me to change my position in this matter. These statements are true and are the same facts as in the beginning.

Vickey M. Utter
3-29-89

available to it. At no time did I ever discuss use of my property, much less specific terms of any proposed use, with Ms. Klemmer or any other representative of Liberty.

I know of no possible basis upon which Ms. Klemmer or Liberty could have honestly represented to the FCC that I provided Liberty with assurance of the availability of my property for use as a transmitter site.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

2-22-89
Date

Vickey M. Utter
Vickey M. Utter
Feb 22-89

ee ☐ No

987

ty

only one box

11 ☐ B

11 ☐ C

idmark

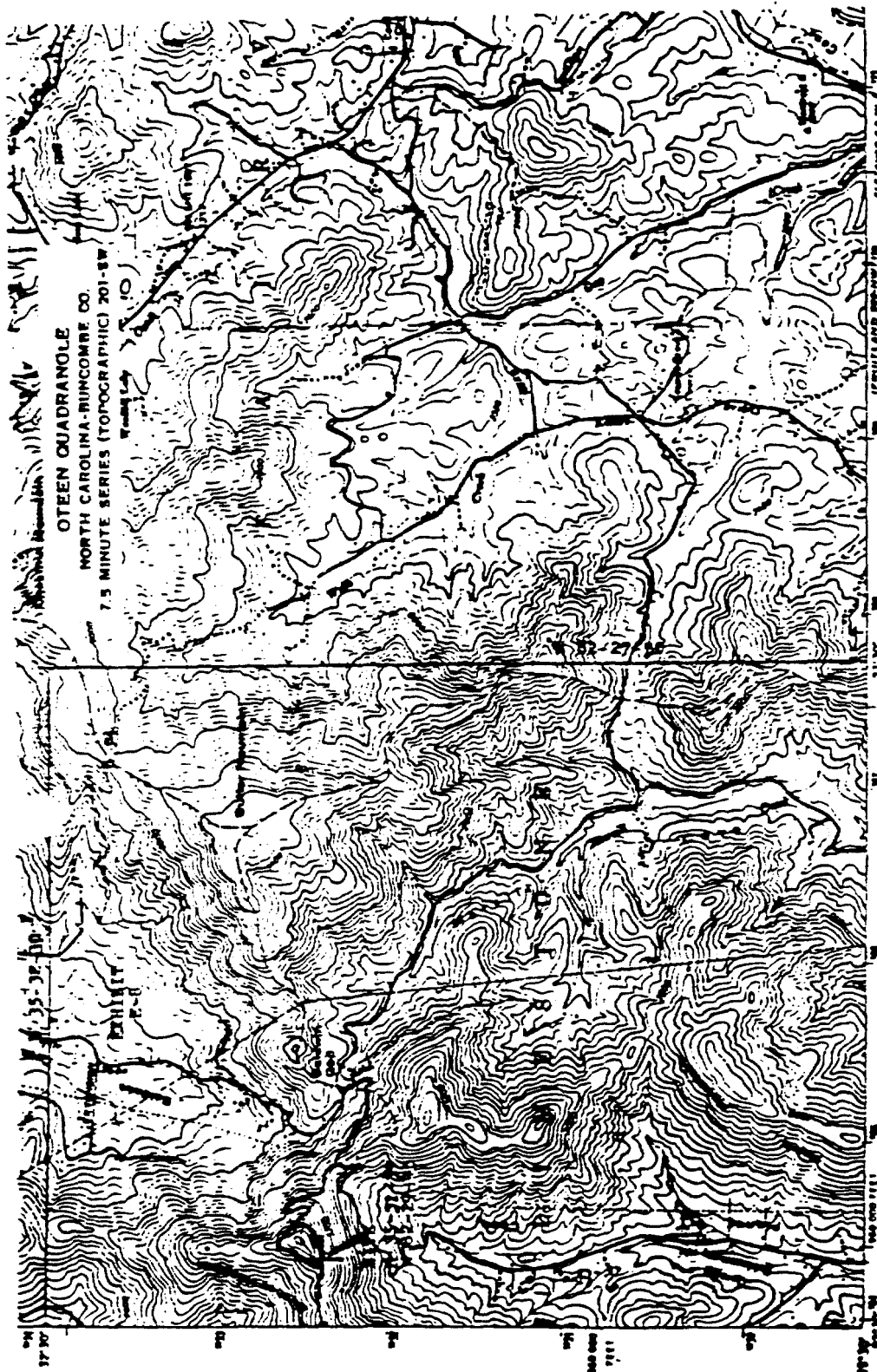
NC

y. Otherwise.
Longitude will

45

Yes ☒ No

na, all other



Maped and edited by Tennessee Valley Authority
Published by the Geological Survey

Control by USCGS, USGS, and TVA

Revised by TVA in 1962 by photogrammetric methods using
aerial photographs taken 1960 and by reference to TVA USGS
quadrangle dated 1947. Map field checked by TVA, 1967

Photometric projection. 1927 North American datum

10,000 foot grid based on North Carolina

rectangular coordinate system

1000 meter Universal Transverse Mercator (UTM) Zone 17, shown in blue

Flow red dashed lines indicate selected fence and field lines
made on aerial photographs. This information is uncharted

SCALE 1:24,000



CONTOUR INTERVAL 40 FEET
Dashed lines represent spot interval contours
derived from sea level

OTEEEN, N. C.
H1510-W1022 5/15

1947

AMN 4515 8 20 10 1947

THIS MAP COMPLETES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U S GEOLOGICAL SURVEY, WASHINGTON, D. C. 20548.
U S TENNESSEE VALLEY AUTHORITY, CHATTANOOGA, TENN. 37401 OR KNOXVILLE, TENN. 37902.
AND TENNESSEE DIVISION OF GEOLOGY, NASHVILLE, TENNESSEE 37219
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